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Charitable Corporations—Application of Workmen's Compensation Acts

Shiffler (D. C. M. D. Pa. 1902) 112 F. 505. As might be expected in view of such a state of the decisions, the leading commentators upon the law of bankruptcy were in direct conflict. Collier on Bankruptcy (12th ed.) p. 93 (it is not an act of bankruptcy); Remington, Elements of Bankruptcy Law (3rd ed.) p. 16 (it is an act of bankruptcy). There is, of course, no difficulty if there were creditors with provable claims at the time the conveyance was made. Then, the creditor whose claim was contingent at the time of the conveyance may join in the petition which forces the conveyor into bankruptcy, provided the claim has been liquidated so as to be provable at the time the petition is filed. *In Re Van Horn* (C. C. A. 2, 1917) 246 F. 822.

As the principal case points out, the word "include" is more frequently used to introduce words which extend what would normally be the definition of the class in question than to limit the extent of a class. *In Re Harper* (D. C. N. D. N. Y. 1910) 175 F. 412 (which construed the word as used in a later definition in the same section of the Bankruptcy Act with reference to what were "debts"); *Fraser v. Bentel* (1911) 161 Cal. 390, 119 Pac. 509; *Wyatt v. City of Louisville* (1924) 206 Ky. 432, 267 S. W. 146; *Cooper v. Stinson* (1861) 5 Minn. 522. Such an interpretation is especially logical under the peculiarities of wording of the definition section of the Bankruptcy Act, where in some instances the narrow phrase "shall mean" is substituted for "include".

The decision in the principal case is to be welcomed as settling a hitherto disputed point in the interpretation of a statute, whose correct meaning is becoming increasingly important because of the prevailing economic conditions. The decision would seem to accord with sound moral policy for there is no more reason to allow a person with impunity to hinder, delay or defraud a contingent creditor than there is to allow him to do so towards a creditor who at the time holds a provable claim. Indeed, the contingent creditor is so placed that he is in need of the fullest protection, since he cannot take steps to attach the property or otherwise prevent the conveyance, remedies which are possessed by a creditor with a provable claim. G. W. S., '33.

CHARITABLE CORPORATIONS—APPLICATION OF WORKMEN'S COMPENSATION ACTS.—The plaintiff was injured while working as a paid employee of a charitable corporation. The Workmen's Compensation Commission allowed a claim for the compensation fixed by the Statute. The corporation resisted payment on the ground that the Act did not apply to charitable corporations. It was held that the Act applies to charitable corporations. *Hope v. Barnes Hospital* (Mo. App. 1932) 55 S. W. (2d) 319.

There should be little hesitation in applying a Workmen's Compensation Act to charitable corporations in the minority of states which hold such corporations fully liable for torts committed by their agents or servants. However, in most states it has become a settled rule of law that a charitable corporation is not liable to the beneficiaries of the charity for torts done to

them, because such liability would tend to divert the funds of the charity from the purpose for which they were intrusted to it. In such states there is a sharp conflict in the authorities as to whether a charity can be liable to its employees at common law. Several states impose such a liability on the ground that the duty which a master owes his servant is an absolute, non-delegable duty imposed by law on all alike. *McInery v. St. Luke's Hospital Ass'n* (1913) 122 Minn. 10, 141 N. W. 837; *Geiger v. Simpson M. E. Church* (1928) 174 Minn. 389, 219 N. W. 463; *Hewett v. Woman's Hospital Aid Ass'n* (1906) 73 N. H. 556, 64 Atl. 190; *Armandez v. Hotel Dieu* (Tex. Civ. App. 1912) 145 S. W. 1030, *aff'd* (Tex. Com. of App. 1919) 210 S. W. 518, on the basis of the opinion below as to this point. Other states reach the same result on a different basis. These say that a beneficiary cannot recover because he must take the gift with the limitations imposed by the implied intent of the donor that the money should not be diverted from charitable purposes. However, an employee is not the recipient of such a bounty and hence is not bound by such conditions. *Bruce v. Central M.-E. Church* (1907) 147 Mich. 230, 110 N. W. 951; *Hodern v. Salvation Army* (1910) 199 N. Y. 233, 92 N. E. 626; *Cowans v. North Carolina Baptist Hospitals* (1929) 197 N. C. 41, 147 S. E. 672. Still other cases impose such a liability but do so in such vague language that it is impossible to tell what basis is used. *Old Folk's and Orphan Children's Home v. Roberts* (1930) 91 Ind. App. 533, 171 N. E. 10; *Sisters of Charity v. Duvelius* (1930) 123 Oh. St. 52, 173 N. E. 737. There are, however, a considerable number of states which consider that the reason why a beneficiary cannot recover is essentially one of public policy, i. e. that the public as a whole are interested that charitable funds should not be diverted to non-charitable uses, and that hence neither a beneficiary nor an employee can recover. *Eads v. Young Woman's Christian Ass'n* (1930) 325 Mo. 577, 29 S. W. (2d) 701; *Whittaker v. St. Luke's Hospital* (1909) 137 Mo. App. 116, 117 S. W. 1189; *Emery v. Jewish Hospital Ass'n* (1921) 193 Ky. 400, 236, S. W. 757; *Farrigan v. Pevear* (1906) 193 Mass. 147, 78 N. E. 855; and *cf. O'Neill v. Odd Fellows Home* (1918) 89 Or. 382, 174 Pac. 148, where the exemption was incorporated into the special statute creating the corporation.

There have been few cases dealing with the specific question covered by this Missouri case. In a recent Tennessee case the Statute was held applicable, but the decision was placed on the ground that the charitable corporation would have been liable at common law and the Statute merely changed the remedy. *Lincoln Memorial University v. Sutton* (1931) 163 Tenn. 298, 43 S. W. (2d) 193. A Michigan decision likewise assumes that the Act would apply, the case going off on the point that a novice in a Catholic nursing order was not an employee within the meaning of the Statute. *Blust v. Sisters of Mercy* (1931) 256 Mich. 1, 239 N. W. 401 (but in Michigan the charitable corporation would be liable for torts to employees at common law, *Bruce v. Central M.-E. Church, supra*). Construing a Massachusetts Statute which applied to "every person in the service of another under any contract of hire" (with certain exceptions, none of which could conceivably apply to

charitable corporations), the Massachusetts Supreme Court reached the conclusion that the legislature could not have intended to abolish by implication the common law defense of a charitable corporation, applying the canon of statutory construction that statutes in derogation of the common law are to be strictly construed. *Zoulalian v. New England Sanitorium & Benevolent Ass'n* (1918) 230 Mass. 102, 119 N. E. 686. A similar result was reached in New York, but here the decision was based on the fact that the employments covered were limited to employments "in a trade, business, or occupation carried on by the employer for pecuniary gain". *Dillon v. St. Patrick Cathedral* (1922) 234 N. Y. 225, 137 N. E. 311. The sequel of this case is interesting. In the same year it was held that where the charitable corporation carried insurance, the insurer could not invoke the immunity of the charity. *Bernstein v. Beth Israel Hospital* (1923) 236 N. Y. 268, 140 N. E. 694. In 1929 the Statute was amended so as to extend it to any person, firm, or corporation employing four or more persons. N. Y. Laws (1929) ch. 304; C. S. N. Y. (Cahill 1930) ch. 66 sec. 3 (18). This extension is logical in New York where the charitable corporation would be liable at common law to a servant.

The words of the Missouri Statute interpreted literally are broad enough to include charitable corporations, for employer is defined to include every "corporation". However, the second subdivision of the same section shows that this term is not to be taken literally, for "municipal corporations" are only included if the body elects to accept the chapter by law or ordinance. R. S. Mo. (1929) sec. 3304. The Statute expressly provides that it shall be conclusively presumed to apply to all employers who do not elect to reject it, by filing a notice with the commission (which must also be posted at the plant). R. S. Mo. (1929) sec. 3300. The whole theory of this election seems to be that it is an election between liability under the Statute or liability at common law. It would hardly seem that such an elective liability could be meant to destroy an absolute defense, which would have prevented there being any liability at all. Rules which are based on public policy should not be changed by such shadowy implications. Of course, charitable corporations can avoid all future trouble by promptly filing the notice of election with the commission. G. W. S., '33.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—RIGHT TO COUNSEL.—The defendant negroes were convicted in Alabama of the crime of rape upon two white girls. They were not given an opportunity before trial to communicate with relatives and friend to attempt to secure counsel. At the time they were arraigned, the trial judge stated he appointed all the members of the local bar as their counsel, but did not designate any particular attorney to aid the defendants until the case was actually called for trial. The result was that the counsel finally assigned was unprepared to defend the case and the defendants were deprived of the effective assistance of counsel. From a decision of the Alabama Supreme Court affirming the conviction, certiorari